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Officials Say U.S. Wiretaps Exceeded Law

By ERIC LICHTBLAU and JAMES RISEN

WASHINGTON — The National Security Agency intercepted private e-mail messages and phone calls of Americans in recent months on a scale that went beyond the broad legal limits established by Congress last year, government officials said in recent interviews.

Several intelligence officials, as well as lawyers briefed about the matter, said the N.S.A. had been engaged in "overcollection" of domestic communications of Americans. They described the practice as significant and systemic, although one official said it was believed to have been unintentional.

The legal and operational problems surrounding the N.S.A.'s surveillance activities have come under scrutiny from the Obama administration, Congressional intelligence committees and a secret national security court, said the intelligence officials, who spoke only on the condition of anonymity because N.S.A. activities are classified. Classified government briefings have been held in recent weeks in response to a brewing controversy that some officials worry could damage the credibility of legitimate intelligence-gathering efforts.

The Justice Department, in response to inquiries from The New York Times, acknowledged Wednesday night that there had been problems with the N.S.A. surveillance operation, but said they had been resolved.

As part of a periodic review of the agency's activities, the department "detected issues that raised concerns," it said. Justice Department officials then "took comprehensive steps to correct the situation and bring the program into compliance" with the law and court orders, the statement said. It added that Attorney General Eric H. Holder Jr. went to the national security court to seek a renewal of the surveillance program only after new safeguards were put in place.

In a statement on Wednesday night, the N.S.A. said that its "intelligence operations, including programs for collection and analysis, are in strict accordance with U.S. laws and regulations." The Office of the Director of National Intelligence, which oversees the intelligence community, did not address specific aspects of the surveillance problems but said in a statement that "when inadvertent mistakes are made, we take it very seriously and work immediately to correct them."

The questions may not be settled yet. Intelligence officials say they are still examining the scope of the N.S.A. practices, and Congressional investigators say they hope to determine if any violations of Americans' privacy occurred. It is not clear to what extent the agency may have actively listened in on conversations or read e-mail messages of Americans without proper court authority, rather than simply obtained access to them.

The intelligence officials said the problems had grown out of changes enacted by Congress last July in the law that regulates the government's wiretapping powers, and the challenges posed by enacting a new framework for collecting intelligence on terrorism and spying suspects.

While the N.S.A.'s operations in recent months have come under examination, new details are also emerging about earlier domestic-surveillance activities, including the agency's attempt to wiretap a member of Congress, without court approval, on an overseas trip, current and former intelligence officials said.

After a contentious three-year debate that was set off by the disclosure in 2005 of the program of wiretapping without warrants that President George W. Bush approved after the Sept. 11 attacks, Congress gave the N.S.A. broad new authority to collect, without court-approved warrants, vast streams of international phone and e-mail traffic as it passed through American telecommunications gateways. The targets of the eavesdropping had to be "reasonably believed" to be outside the United States. Under the new legislation, however, the N.S.A. still needed court approval to monitor the purely domestic communications of

Americans who came under suspicion.

In recent weeks, the eavesdropping agency notified members of the Congressional intelligence committees that it had encountered operational and legal problems in complying with the new wiretapping law, Congressional officials said.

Officials would not discuss details of the overcollection problem because it involves classified intelligence-gathering techniques. But the issue appears focused in part on technical problems in the N.S.A.'s ability at times to distinguish between communications inside the United States and those overseas as it uses its access to American telecommunications companies' fiber-optic lines and its own spy satellites to intercept millions of calls and e-mail messages.

One official said that led the agency to inadvertently "target" groups of Americans and collect their domestic communications without proper court authority. Officials are still trying to determine how many violations may have occurred.

The overcollection problems appear to have been uncovered as part of a twice-annual certification that the Justice Department and the director of national intelligence are required to give to the Foreign Intelligence Surveillance Court on the protocols that the N.S.A. is using in wiretapping. That review, officials said, began in the waning days of the Bush administration and was continued by the Obama administration. It led intelligence officials to realize that the N.S.A. was improperly capturing information involving significant amounts of American traffic.

Notified of the problems by the N.S.A., officials with both the House and Senate intelligence committees said they had concerns that the agency had ignored civil liberties safeguards built into last year's wiretapping law. "We have received notice of a serious issue involving the N.S.A., and we've begun inquiries into it," a Congressional staff member said.

Separate from the new inquiries, the Justice Department has for more than two years been investigating aspects of the N.S.A.'s wiretapping program.

As part of that investigation, a senior F.B.I. agent recently came forward with what the inspector general's office described as accusations of "significant misconduct" in the surveillance program, people with knowledge of the investigation said. Those accusations are said to involve whether the N.S.A. made Americans targets in eavesdropping operations based on insufficient evidence tying them to terrorism.

And in one previously undisclosed episode, the N.S.A. tried to wiretap a member of Congress without a warrant, an intelligence official with direct knowledge of the matter said.

The agency believed that the congressman, whose identity could not be determined, was in contact — as part of a Congressional delegation to the Middle East in 2005 or 2006 — with an extremist who had possible terrorist ties and was already under surveillance, the official said. The agency then sought to eavesdrop on the congressman's conversations, the official said.

The official said the plan was ultimately blocked because of concerns from some intelligence officials about using the N.S.A., without court oversight, to spy on a member of Congress.

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